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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/666,813	09/21/2000	Kevin R. Crompton	M0459/7018 DW	9117

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EXAMINER
JUSKA, CHERYL ANN

ART UNIT	PAPER NUMBER
1771	

DATE MAILED: 06/05/2003

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary	Application No. 09/666,813	Applicant(s) CROMPTON, KEVIN R.	
	Examiner Cheryl Juska	Art Unit 1771	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

1)☒ Responsive to communication(s) filed on *12 March 2003* .

2a)☐ This action is **FINAL**. 2b)☒ This action is non-final.

3)☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

4)☒ Claim(s) *1-57* is/are pending in the application.

4a) Of the above claim(s) *28-46* is/are withdrawn from consideration.

5)☐ Claim(s) _____ is/are allowed.

6)☒ Claim(s) *1-27 and 47-57* is/are rejected.

7)☐ Claim(s) _____ is/are objected to.

8)☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

9)☐ The specification is objected to by the Examiner.

10)☐ The drawing(s) filed on _____ is/are: a)☐ accepted or b)☐ objected to by the Examiner.

Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).

11)☐ The proposed drawing correction filed on _____ is: a)☐ approved b)☐ disapproved by the Examiner.

If approved, corrected drawings are required in reply to this Office action.

12)☐ The oath or declaration is objected to by the Examiner.

Priority under 35 U.S.C. §§ 119 and 120

13)☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).

a)☐ All b)☐ Some * c)☐ None of:

1.☐ Certified copies of the priority documents have been received.

2.☐ Certified copies of the priority documents have been received in Application No. _____ .

3.☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

14)☒ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).

a) ☐ The translation of the foreign language provisional application has been received.

15)☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

Attachment(s)

1) ☒ Notice of References Cited (PTO-892)
2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
3) ☒ Information Disclosure Statement(s) (PTO-1449) Paper No(s) *10* .
4) ☐ Interview Summary (PTO-413) Paper No(s). _____ .
5) ☐ Notice of Informal Patent Application (PTO-152)
6) ☐ Other: .

DETAILED ACTION

Response to Amendment

1. Amendment A, submitted as Paper No. 12 on March 12, 2003, has been entered. Claims 6, 19, and 27 have been amended as requested. The pending claims are 1-57 with claims 28-46 being withdrawn as non-elected.

2. Said amendment is sufficient to withdraw the 112, 2nd rejection of claims 6, 19, and 27, as set forth in sections 6-8 of the last Office Action. Additionally, applicant's arguments are persuasive with respect to the rejection of the claims based upon Van Alboom (US 6,247,215). Thus, the prior art rejections set forth in sections 9-12 of the last Office Action are hereby withdrawn.

Claim Rejections - 35 USC § 103

3. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

> (a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negatived by the manner in which the invention was made.

4. Claims 1, 2, 7-15, 20-25, 49, and 52 are rejected under 35 U.S.C. 103(a) as being unpatentable over US 6,247,215 issued to Van Alboom et al.

Applicant claims a fabric comprising a substrate, an adhesive layer, and a pile layer adhered to said substrate via the adhesive (i.e., a flocked fabric). The pile has an embossed pattern of depressions thereon and a printed pattern superimposed upon said embossed pattern.

The embossment imparts a 3-D texture to the printed pattern so that the printed pattern is more realistic than without said superimposed embossed pattern. The embossed pattern comprises "generally elongate shapes" with the longitudinal axes of said shapes oriented in a first direction. The embossed pattern and printed pattern are preferably essentially randomly positioned with respect to each other. The printed pattern is preferably a sylvan setting, such as trees, bushes, leaves, bark, etc., which renders the flocked fabric usable as a camouflage fabric. The embossed pattern is substantially non-uniform in length and width, while the printed pattern on said depressions has a color and shading different from the printed pattern not superimposed on said depressions. The embossment is preferably done by air embossing, while the printing is preferably done by heat transfer.

Van Alboom teaches it is known to texture a flock fabric by air embossing and, thereafter, printing said air-embossed fabric (col. 1, lines 65-66). Van Alboom also teaches alternative methods of printing include screen printing and heat transfer (col. 6, lines 1-6). It is asserted that an embossment process, by definition, inherently imparts the claimed "visually discernable regions," "3-D texture," and "depressions." With respect to the claimed "elongate shapes" 'oriented in a first direction,' 'essentially random positioning with respect to each other,' 'more realistic,' and 'color and shading different' limitations of the embossed pattern and the printed pattern, it is asserted that said limitations are descriptive of a specific design pattern. In the absence of a showing of criticality for the claimed design pattern, it asserted that said limitations are obvious over the cited Van Alboom disclosure. Specifically, it is asserted that it would have been obvious to one of ordinary skill in the art to modify the embossed and printed patterns of Van Alboom as matter of design choice. *In re Seid*, 161 F.2d 229, 73 USPQ 431

(CCPA 1947), found that matters relating to ornamentation only which have no mechanical function cannot be relied upon to patentably distinguish the claimed invention from the prior art. *In re Dailey*, 357 F.2d 669, 149 USPQ 47 (CCPA 1966), found that a particular configuration was a matter of design choice which a person of ordinary skill in the art would have found obvious absent persuasive evidence that the particular configuration of the claimed configuration was significant. Therefore, claims 1, 2, 7-15, 20-25, 49, and 52 are rejected as being obvious over the cited Van Alboom patent.

5. Claims 1, 2, 7-15, 20-25, 49, and 52 are rejected under 35 USC 103(a) as being unpatentable over WO 00/71802 issued to Laird et al.

Laird discloses an apparatus for air embossing pile fabrics, such as flock fabrics (abstract, page 10, lines 12-16, and page 13, lines 20-26). The apparatus comprises air lance nozzles which are in the shape of an elongated slit (abstract), which produces 3-D texture or a pattern of depressions correlating to said elongated slits (page 17, lines 9-30). After embossing the flock fabric, said fabric may be printed by screen printing or heat transfer printing (page 15, lines 4-7). Thus, Laird teaches the presently claimed invention with the exception that the printed pattern correlates to the embossed pattern. However, as argued above, in the absence of a showing of criticality for the claimed design pattern, it asserted that said limitations are obvious over the cited Laird disclosure. Specifically, it is asserted that it would have been obvious to one of ordinary skill in the art to modify the embossed and printed patterns of Laird as matter of design choice. *In re Seid*, 161 F.2d 229, 73 USPQ 431 (CCPA 1947), found that matters relating to ornamentation only which have no mechanical function cannot be relied upon to patentably distinguish the claimed invention from the prior art. *In re Dailey*, 357 F.2d 669, 149 USPQ 47

(CCPA 1966), found that a particular configuration was a matter of design choice which a person of ordinary skill in the art would have found obvious absent persuasive evidence that the particular configuration of the claimed configuration was significant. Therefore, claims 1, 2, 7-15, 20-25, 49, and 52 are rejected as being obvious over the cited Laird reference.

6. Claims 3-6, 16-19, 26, 27, 47, 48, 50, 51, and 53-57 are rejected under 35 USC 103(a) as being unpatentable over the cited Van Alboom patent as applied above and in further view of US 5,756,180 issued to Squires et al.

Claims 3-6, 16-19, 26, 27, 47, 48, 50, 51, and 53-57 are rejected under 35 USC 103(a) as being unpatentable over the cited Laird patent as applied above and in further view of US 5,756,180 issued to Squires et al.

Van Alboom and Laird do not explicitly teach a camouflage flock fabric. However, said fabrics are well known in the art. For example, Squires discloses a flocked fabric suitable as outerwear, which can be of a camouflage pattern (abstract and col. 1, lines 13-18). Thus, it would have been obvious to one of ordinary skill in the art to choose a camouflage pattern for the printing pattern taught by Van Alboom or Laird. Motivation to do so would be to provide an aesthetically pleasing and marketable product.

Conclusion

7. Any inquiry concerning this communication or earlier communications from the Examiner should be directed to Cheryl Juska whose telephone number is 703-305-4472. The Examiner can normally be reached on Monday-Friday 10am-6pm.

If attempts to reach the Examiner by telephone are unsuccessful, the Examiner's supervisor, Terrel Morris can be reached on 703-308-2414. The fax phone numbers for the organization where this application or proceeding is assigned are 703-872-9310 for regular communications and 703-872-9311 for After Final communications.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is 703-308-0661.

CHERYL A. JUSKA
PRIMARY EXAMINER

cj
June 2, 2003